ABD RAHMAN MAIDIN

v.

TIMBALAN MENTERI DALAM NEGERI MALAYSIA & ORS

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
HAIDAR MOHD NOOR JCA
[CRIMINAL APPEAL NO: M-05-24-99]
15 FEBRUARY 2000

CRIMINAL PROCEDURE: *Habeas corpus - Preventive detention - Detention order ambiguous as to grounds of detention - Proximity of time between alleged illegal act and date of detention order - Whether delay crucial - Whether order invalid - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 6, 9*

PREVENTIVE DETENTION: *Dangerous drugs - Detention order - Detention order ambiguous as to grounds of detention - Proximity of time between alleged illegal act and date of detention order - Whether delay crucial - Whether order invalid - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 6, 9 - Application for habeas corpus*

STATUTORY INTERPRETATION: *Construction of statutes - Conjunctive or disjunctive - Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6(1)*

The appellant was detained under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') under a detention order ('the order') issued by the first respondent ('the Minister'). The appellant applied to the High Court for a writ of *habeas corpus* but his application was rejected.

The appellant appealed on grounds relating to: (i) the Minister's failure to state precisely the provisions of s. 6 of the Act under which he had been detained, *ie*, whether it was the appellant's past or present conduct which was being relied upon to indicate his association with trafficking dangerous drugs and the nature of such association; and (ii) the six-month lapse between the time when the alleged criminal act was committed and the date of the order.

It was not disputed that the appellant had, together with the detention order, been served with a statement issued under s. 9 of the Act, containing specific charges and full particulars of the appellant's alleged criminal activities on which the order was based ('the s. 9 statement').

Held:
Per Siti Norma Yaakob JCA

[1] Section 6(1) of the Act encompasses two categories of persons, *ie*, those previously associated with activity relating to or involving the trafficking of dangerous drugs, and those currently associated with the same. The effect of the use of the word "or" between the words "relating to" and "involving" in the sub-section is to give a wider and all-encompassing meaning to a detainee's criminal activity.

[2] The failure of the Minister to clearly identify the category of persons to which the appellant was alleged to belong did not nullify the order. If anything at all, it was a defect as to form and not in substance. Furthermore, any ambiguity in the order would have been laid to rest from a reading of the s. 9 statement. Alternatively, representations could have been made to the Advisory Board.

[3] The court accepted the Minister's statement that the delay was due to the time taken to complete police investigations into the appellant's past criminal activities. As such the six-month lapse was not too remote as to render the order invalid.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu ditahan di bawah s. 3(1) Dangerous Drugs (Special Preventive Measures) Act 1985 ('Akta tersebut') menurut perintah penahanan ('perintah tersebut') yang dikeluarkan oleh responden pertama ('Menteri tersebut'). Perayu memohon kepada Mahkamah Tinggi untuk suatu writ *habeas corpus* tetapi permohonan perayu ditolak.

Perayu merayu atas alasan berkenaan dengan: (i) kegagalan Menteri tersebut untuk menyatakan secara tepat syarat-syarat di dalam s. 6 Akta tersebut yang mana di bawah perayu ditahan, iaitu samada kelakuan perayu yang lepas atau yang sekarang disandar untuk menunjukkan perkaitannya dengan pengedaran dadah merbahaya dan sifat perhubungan sebegitu; dan (ii) kelewatan enam bulan di antara masa kegiatan jenayah yang dituduh dilakukan dan tarikh perintah tersebut.

Adalah tidak dipertikaikan bahawa perayu bersama dengan perintah penahanan telah diserahkan dengan penyataan yang dikeluarkan di bawah s. 9 Akta tersebut yang mengandungi tuduhan yang khusus dan butiran kegiatan jenayah perayu yang lengkap yang mana digunakan untuk mengeluarkan perintah tersebut.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Seksyen 6(1) Akta tersebut meliputi orang-orang di bawah dua ketegori, iaitu mereka yang dahulunya mempunyai perhubungan dengan aktiviti berkenaan atau berhubung dengan pengedaran dadah merbahaya, dan mereka yang sekarang berhubung dengan yang sama. Kesan menggunakan perkataan "atau" di antara perkataan "relating to" dan "involving" di dalam sub-seksyen adalah untuk memberikan maksud yang luas dan yang meliputi semua kegiatan jenayah orang yang ditahan.

[2] Kegagalan Menteri tersebut untuk mengenalkan dengan jelasnya ketegori orang-orang yang mana perayu menganggotai tidak membatalkan perintah tersebut. Jika ada apa-apa pun, ia hanya kecacatan bekenaan rupa sahaja dan bukan kandungan. Lebih-lebih lagi sebarang kekaburan di dalam perintah tersebut boleh menjadi jelas melalui pembacaan penyataan di bawah s. 9. Secara alternatif, representasi boleh dibuat kepada Lembaga Penasihat.

[3] Mahkamah telah menerima penyataan Menteri tersebut bahawa kelewatan adalah kerana masa yang diambil untuk menyempurnakan siasatan polis terhadap kegiatan jenayah perayu yang terdahulu. Oleh demikian jurang enam bulan adalah bukan begitu terasing untuk menjadikan perintah tersebut tidak sah.

[Rayuan ditolak.]

Case(s) referred to:
Chan Ng v. Menteri Hal Ehwal Dalam Negeri & Ors [1995] 2 CLJ 798 ***(foll)***
Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129 ***(foll)***
Morgan Perumal v. K/I Hussein Abdul Majid & Ors [1998] 3 CLJ 629 ***(refd)***
Sahib Singh Dugal v. Union of India AIR [1966] SC ***(dist)***
Yeap Hock Seng v. Minister for Home Affairs Malaysia & Ors [1975] 2 MLJ 279 ***(dist)***

Legislation referred to:
Criminal Procedure Code, s. 365(1)(b)
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2), (3), 5(4), 6(1), 9(1), (2)

For the appellant - Dr S Balasekaran (Feisal Abu Bakar & Anita Rajah with him); M/s Bala & Co
For the respondents - Abdul Alim Abdullah SFC (Kamaludin Mohd Said with him)

Reported by Anne Khoo

JUDGMENT

Siti Norma Yaakob JCA:

On 9 August 1998, the appellant was arrested and detained by the Kelantan Narcotics Department under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act"). On 7 October 1998, the Deputy Minister for Home Affairs issued an order detaining the appellant for two years with effect from 7 October 1998 at the Rehabilitation Centre, Simpang Renggam, Johore managed by the third respondent, under s. 6(1) of the Act. The appellant was served with the detention order the same day and likewise the appellant's wife was notified of the same.

On 22 December 1998, the appellant applied by way of an originating summons, for a writ of *habeas corpus* under s. 365(1)(b) of the Criminal Procedure Code, alleging that his continued detention is illegal based principally on the ground that the relevant provisions of the Act relating to his detention had not been complied with and that there had been a long delay from the time the cause of his last act of detention was known to the time the detention order was issued. The High Court rejected both allegations and dismissed the appellant's originating summons.

In his petition, the appellant raised thirteen grounds of appeal but before us, his counsel, Dr. S. Balasekaran confined his arguments to three grounds which effectively relate to the failure of the Deputy Minister to indicate precisely under which provisions of s. 6(1) of the Act he was detained and the delay point.

The appellant affirmed two affidavits one in support of his application and the other in reply. The respondents also rely on two affidavits, one affirmed by Chief Inspector Mohamad bin Johari, the officer who conducted the investigations into the appellant's criminal activities and the other by the Deputy Minister himself.

The first objection taken by the appellant is the ambiguity apparent on the face of the detention order itself as to render it invalid. It is not disputed that the police had been investigating into the appellant's involvement in the trafficking of dangerous drugs between the period November 1997 to February 1998, six months before his arrest and detention. During that period he was alleged to have been trafficking in ganja in Batu Pahat, Johore, selling the dangerous drug at RM1,300 per kilogram from supplies obtained in Kelantan where it was purchased at RM900 per kilogram and during the period of his involvement he had in his possession a total of 47 kilograms of ganja for distribution. It must be emphasised here that the investigations that were carried out relate to the appellant's past criminal activities and this fact, the appellant contends must be clearly identified in the detention order itself.

At this point it is appropriate that we reproduce the penultimate part of the detention order that is being attacked.

> Bahawasanya, selepas menimbangkan laporan lengkap penyiasatan dan laporan Pegawai Siasatan yang dikemukakan, saya adalah puashati bahawa orang yang tersebut di bawah ini pernah *ada/sedang ada kaitan dengan aktiviti yang berhubungan *dengan/yang melibatkan pengedaran dadah merbahaya;

At the foot of the order there is a directive to delete whatever is not relevant at the places where the star or asterisk appears in the following manner:

> *potong dimana tidak berkenaan.

It is the appellant's contention that in failing to firstly cross out the true nature of the appellant's criminal activities as to indicate whether such activities were past or present and secondly to indicate his involvement or association in the trafficking of dangerous drugs, the appellant is left in doubt as to the true nature and reason of his detention. As such the detention order is vague and there is ambiguity on the face of it and this makes the detention order invalid.

Perhaps the answer to this lies in the particular section of the law under which the detention order was issued. Section 6(1) of the Act makes the following provisions.

> **Power to order detention and restriction of persons**
>
> (1) Whenever the Minister, after considering
>
> (a) the complete report of investigation submitted under subsection (3) of section 3; and
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> (b) the report of the Inquiry Officer submitted under subsection (4) of section 5;
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained by order (hereinafter referred to as a "detention order") direct that such person be detained for a period of not exceeding two years.

From our reading of s. 6(1), it would seem that it encompasses two categories of persons namely those who have been associated with any activity relating to or including the trafficking in dangerous drugs and those who are currently or presently associated with the same type of criminal activity. It does not, we say, contain two separate limbs as was suggested before us. The effect of the use of the conjunction "or" between the words

"relating to" and "involving" in the subsection is to give a wider and an all encompassing meaning to a detainee's criminal activity. That same argument was raised and rejected by Mohd. Ghazali bin Mohd. Yusoff, JC (as he then was) in the case of *Chan Ng v. Menteri Hal Ehwal Dalam Negeri & 2 Ors*. [1995] 2 CLJ 798. We confirm the finding of the learned Judicial Commissioner in that case to have been correctly given and adopt the same reasoning.

As we have stated, what s. 6(1) does is to identify the criminal activities of two categories of persons and the appellant falls within the first category ie, he was detained for his past criminal activities in the trafficking of ganja and such activities were confined to the period between November 1997 to February 1998.

The issue then is whether the Deputy Minister's failure to identify the category of persons to whom the appellant is one, by not crossing out the irrelevant words "sedang ada" in the detention order makes the detention order vague and defective as to nullify it. We say it does not for the following reasons.

It is a defect, if indeed it can be considered so, as to form only and not to substance. See the case of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129. The substance of the case here is that the Deputy Minister had considered the complete report of the police investigations and the report of the Inquiry Officer submitted to him under ss. 3(3) and 5(4) of the Act, and after satisfying himself that the extent of the appellant's involvement in the trafficking of ganja is a real threat to public order, he had issued the detention order.

It is not disputed that together with the detention order, the appellant was also served with a statement dated 7 October 1998 signed by an Assistant Secretary on instructions of the Deputy Minister. The statement sets out the grounds on which the detention order was made and identifies three specific charges with full particulars of the appellant's criminal activities on which the detention order was based. We can do no better than to reproduce that statement:

AKTA DADAH BERBAHAYA (LANGKAH-LANGKAH PENCEGAHAN KHAS) 1985 NAMA ORANG TAHANAN: ABD RAHMAN BIN HAJI MAIDIN

NO. K/P: 611028-01-5355 (6273073)

ALASAN-ALASAN YANG ATASNYA PERINTAH ITU DIBUAT

Bahawa kamu pernah ada kaitan dengan apa-apa aktiviti yang berhubungan atau yang melibatkan pengedaran dadah berbahaya.

TUDUHAN-TUDUHAN YANG ATASNYA PERINTAH ITU DIASASKAN:

1. Bahawa kamu adalah seorang pengedar dadah ganja di Bandar Batu Pahat, Johor sejak November 1997 hingga Februari 1998.

2. Bahawa kamu mengedar dadah ganja dalam bentuk kilo dengan harga RM1,300.00 bagi satu kilo.

3. Bahawa kamu mendapat bekalan dadah ganja dari pengedar dadah ganja di Kelantan dengan harga RM900.00 satu kilogram dan sepanjang tempoh yang tersebut di atas kamu telah 3 kali memperolehi ganja berjumlah 47 kilogram untuk diedarkan.

Dengan Arahan
Timbalan Menteri Dalam Negeri

T.t.
Tarikh: 7 Oktober 1998. (MOHAMMAD RAZIN BIN ABDULLAH)
Penolong Setiausaha
Kementerian Dalam Negeri

(Rujukan: KDN.S.205/1182/5-9092).

The aforesaid statement was issued pursuant to s. 9(2) of the Act and if indeed the appellant was unsure as to the true extent of his involvement, present or past, from the detention order, that uncertainty must have been put to rest from a reading of the statement itself. If such reading had still not resolved his doubt, he has a remedy under s. 9(1) of the Act to make representations to an Advisory Board, a right that he acknowledged he had been informed of but which he did not take advantage of. We say that under these circumstances it is too late to do so now before us.

Finally we come to the appellant's objection that the six months gap between the last known act of his criminal activities in February 1998 to the issuance of the detention order on 7 October 1998 is too remote in point of time to justify his detention. See the case of *Yeap Hock Seng @ Ah Seng v. Minister for Home Affairs, Malaysia & Ors.* [1975] 2 MLJ 279.

That same objection was raised and decided by this court in the case of *Morgan a/l Perumal v. K/I Hussein bin Abdul Majid & 5 Ors.* [1998] 3 CLJ 629; [1998] 3 AMR 2483, where in the absence of any explanation, a delay of over two years, was held to be too remote to justify the detention. That case went to the Federal Court which allowed the appeal but unfortunately we do not have the benefit of a written judgment to guide

us as to whether the delay point was taken on appeal. In the absence of such a guidance, we, like the Judicial Commissioner in the court below, have to fall back on our earlier decision on this point reached in *Morgan's* case.

In the instant appeal, the Deputy Minister has affirmed that the delay was due to the length of time it took the police to investigate into the appellant's past criminal activities. This we consider, is a legitimate and acceptable explanation and we say that on the circumstances of this appeal, the six months gap is not too remote as to render the detention order invalid. We also need to distinguish the circumstances surrounding *Yeap Hock Seng's* case *(supra)*. There, Abdoolcader, J (as he then was) after citing *Sahib Singh Dugal v. Union of India* AIR [1966] SC had this to say at p. 283 of the report.

> This case is also of some significance on another aspect. It also held that a detention order is generally passed in the light of evidence about the past activities of the person concerned. These past activities should however, ordinarily be proximate in point of time to justify the detention order. In that case the petitioners had been in jail for only three months before the order of detention was passed against them, and the court held that it could not therefore be said that the conduct of the petitioners before this period of three months was not proximate enough to justify an order of detention based on that conduct. ... The position of the applicant in the matter before me would seem to be not dissimilar to that in *Sahib Singh Dugal* as he was in police custody for only about four and a half months before the detention order was made against him.

It would appear that the length of time calculated in the two cases cited, refers to the length of time the detainee was kept in custody before the detention order was issued. It did not refer to the length of time the last act of criminal activities was known to the date the detention order was made.

The appellant in the instant appeal was in police custody for fifty eight days, well within the time fixed by s. 3(2) of the Act, when the detention order was issued against him. As such this is an added factor that when the detention order was issued, the proper procedure was adopted and there is no *mala fide* to warrant our finding that the detention is illegal.

For the reasons appearing in this judgment, we have no reason to disturb the finding of the Judicial Commissioner and we accordingly dismiss this appeal and affirm the dismissal of the appellant's petition for *habeas corpus*.